

CHAPTER 98-147

Committee Substitute for Committee Substitute for Senate Bill No. 1704

An act relating to use of rights-of-way by telecommunications companies; amending s. 337.401, F.S.; limiting taxes, fees, or charges imposed by municipalities for use of rights-of-way; limiting local government authority to regulate certain matters within the jurisdiction of the Florida Public Service Commission or the Federal Communications Commission; prohibiting requiring telecommunications companies from obtaining additional consent to use certain rights-of-way under certain circumstances; providing construction; providing application; providing a definition; providing an effective date.

WHEREAS, the Legislature finds it necessary to clarify the authority of local governmental entities over the operations of telecommunications companies and their occupancy of roads and rights-of-way, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1) The department and local governmental entities, referred to in ss. 337.401-337.404 as the “authority,” that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, or telegraph lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the “utility.”

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3) If any municipality ~~municipal authority~~ requires any telecommunications ~~telephone~~ company to pay a fee or other consideration as a condition for granting permission to occupy municipal streets and rights-of-way for

poles, wires, and other fixtures, such fee or consideration may not exceed 1 percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the municipality by such telecommunications telephone company. Included within such 1-percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to subsection (5), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by a municipality upon the telecommunications telephone company. This subsection shall not impair any franchise in existence on July 1, 1985.

(4) A municipality may by ordinance enter into an agreement with any person providing telecommunication services defined in s. 203.012(7) as a condition for granting permission to occupy or use any city street, alley, viaduct, elevated roadway, bridge, or other public way. The agreement shall permit the telecommunication service provider to construct, operate, maintain, repair, rebuild, or replace a telecommunications route within a municipal right-of-way. The agreement shall provide for a fee or other consideration payable annually based on actual linear feet of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. In no event shall the fee or other consideration imposed pursuant to this subsection be less than \$500 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the municipal right-of-way. Any fee or other consideration imposed by this subsection in excess of \$500 shall be applied in a nondiscriminatory manner and shall not exceed the sum of:

(a) Costs directly related to the inconvenience or impairment solely caused by the disturbance of the municipal right-of-way; and

(b) The reasonable cost of the regulatory activity of the municipality.

(c) The proportionate share of cost of land for such street, alley, or other public way attributable to utilization of the right-of-way by a telecommunication service provider. Furthermore, no telecommunication service provider shall be required to pay more than one such fee or other consideration annually for the construction, maintenance, operation, repair, rebuilding, or replacement of a parallel telecommunications route owned by it, or by a subsidiary under its direct control, which makes use of the right-of-way of any municipality enacting an ordinance pursuant to this subsection. The fee or other consideration imposed pursuant to this subsection shall not apply in any manner to any telecommunication service provider who provides telecommunication services as defined in s. 203.012(3) for any services provided by such service provider. Any agreement entered into pursuant to the authority of this subsection prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect until such agreement expires. Any ordinance enacted pursuant to this subsection prior to June 3, 1988, and the fees or fee schedule in effect on that date shall remain in full force and effect unless the ordinance is repealed by the municipality. Notwithstanding the language contained herein a municipality may reenact any ordinance which has an automatic expiration date provided the ordinance does not increase the fees in effect in said ordinance in violation of this section.

(5) Except as expressly allowed or authorized by general law and except for the rights-of-way permit fees subject to subsection (3), a municipality may not levy on a telecommunications company a tax, fee, or other charge for operating as a telecommunications company within the jurisdiction of the municipality or which is in any way related to using roads or rights-of-way. A municipality may not allow a telecommunications company to pay a fee or provide compensation in excess of the limits prescribed in this section. A municipality may not require or solicit in-kind compensation in lieu of any fees imposed pursuant to this section. Nothing in this subsection shall impair any ordinance or agreement in effect on the effective date of this act which provides for or allows in-kind compensation by a telecommunications company.

(6) A local governmental entity may not use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a telecommunications company regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a telecommunications company.

(7) A telecommunications company that has obtained permission to occupy the roads and rights-of-way of an incorporated city or town or that is otherwise lawfully occupying the roads or rights-of-way of a municipality on the effective date of this act shall not be required to obtain additional consent to continue such lawful occupation of those roads or rights-of-way, however, nothing in this subsection shall be interpreted to limit the power of a municipality to impose a fee or adopt or enforce reasonable rules or regulations as provided in this section.

(8) Except as expressly provided in this section, this section does not modify the authority of local governmental entities to levy the tax authorized in s. 166.231 or the duties of telecommunications companies under ss. 337.402-337.404. This section does not apply to building permits, pole attachments, or private roads, private easements, and private rights-of-way. Except as expressly provided in this section, this section does not limit or expand whatever powers counties may have relating to roads and rights-of-way. Nothing in this section shall limit or expand whatever authority a local government may have to impose any fee pursuant to 47 U.S.C. ss. 542 and 573.

(9) As used in this section, "telecommunications company" has the same meaning as defined in s. 364.02.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.